REMARKS

Claims 1-11 are pending in this application. Claims 1 and 10 are independent claims. By this amendment, claims 1 and 8 are amended.

Reconsideration in view of the above amendments and following remarks is respectfully solicited.

The Claims Define Patentable Subject Matter

he Office Action makes the following rejections:

(1) claims 1 and 7-9 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,597,807 to Watkins et al. (hereafter Watkins);

(2) claims 2-4 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Watkins in view of U.S. Patent No. 6,396,946 to Sogawa (hereafter Sogawa);

(3) claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Watkins in view Sogawa and further in view of U.S. Patent No. 6,640,130 to Freeman et al. (hereafter Freeman); and

(4) claims 10 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Watkins in view of U.S. Patent No. 5,129,010 to Higuchi et al. (hereafter Higuchi).

These rejections are respectfully traversed.

Rejections under 35 U.S.C. §102(e)

Applicant respectfully submits that the claimed invention is distinguishable from the cited art, Watkins, for at least the following reasons:

Amended claim 1 recites, *inter alia*, "the three-dimensional thermal image comprises a plurality of color tones having a predetermined correspondence with a luminance represented by the data output from the right infrared camera and the data output by the left infrared camera."

An advantage of this feature is that temperature can be inferred by the user, based on the predetermined color.

In contrast with the present invention, Watkins merely describes assigning Red, Green and Blue (RGB) colors to different spectral ranges. Furthermore, this assignment of colors in Watkins is based solely on the spatial frequency (size) of objects in each spectral range (see column 5, lines 1-24 of Watkins).

As such, Watkins fails to teach or suggest that colors have a predetermined correspondence with luminance, as set forth in the present invention.

Furthermore, applicant respectfully submits that any attempt to modify Watkins to meet the claimed feature would render the device of Watkins inoperable.

For example, as described in column 5, lines 1 and 2 of Watkins, the selection of colors is important, and selecting the colors based on the luminance rather than spatial frequency would prevent the device of Watkins from operating properly. Therefore, it would be improper to combine the other cited references with Watkins in an attempt to produce the claimed invention.

For at least the above reasons, applicant submits that the present invention as set forth in independent claim 1 is distinguishable from Watkins.

According to MPEP §2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ...claims." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). The elements must be arranged as required by the claims, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant respectfully submits that the Office Action has failed to establish the required *prima facie* case of anticipation because the cited reference, Watkins, fails to teach or suggest each and every feature as set forth in the claimed invention.

Applicant respectfully submits that independent claim 1 is allowable over Watkins for at least the reasons noted above.

As for each of the dependent claims not particularly discussed above, these claims are also allowable for at least the reasons set forth above regarding their corresponding independent claims, and/or for the further features claimed therein.

Accordingly, withdrawal of the rejection of claims 1 and 7-9 under 35 U.S.C. §102(e) is respectfully solicited.

CG/CTB/mpe

Rejections under 35 U.S.C. §103(a)

Applicant further respectfully submits that the claimed invention as set forth in independent claim 10 is distinguishable from the combination of Watkins and Higuchi for at least the following reasons:

The Examiner alleges that Watkins discloses image synthesis processing device as claimed in col. 2, lines 13-43 (see Office Action, page 7). Applicant disagrees with this allegation.

Applicant submits that a close review of Watkins col. 2, lines 13-43 merely reveals that a method for processing signals from a plurality of sensors include assigning a Red-Green-Blue (RGB) color code to the left and right signals. However, Watkins fails to disclose an *image synthesis processing device* for synthesizing the data output from the sensors.

In U.S. Patent law, an apparatus must be distinguished from the prior art in terms of structure rather than function, as in accordance with M.P.E.P. §2114. In other words, an apparatus claim covers what a device *is*, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Accordingly, we believe that the prior art reference, Watkins, fails to disclose or suggest the claimed structure of an image synthesis processing device, as set forth in the claimed invention. Watkins merely discloses a method for assigning color codes to stereo signals.

Applicant submits that each of Sogawa, Freeman and Higuchi also fail to teach or suggest the above noted features, thus

each one of these references fail to make up for the deficiencies found in Watkins.

To establish a *prima facie* case of Obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicant respectfully submits that the combination of cited references fail to teach or suggest each and every feature as set forth in the claimed invention.

Applicant respectfully submits that independent claim 10 is allowable over the combination of cited references for at least the reasons noted above.

As for each of the dependent claims not particularly discussed above, these claims are also allowable for at least the reasons set forth above regarding their corresponding independent claims, and/or for the further features claimed therein.

Accordingly, withdrawal of the rejections of claims 2-6, 10 and 11 under 35 U.S.C. §103(a) is respectfully requested.

CG/CTB/mpe

Conclusion

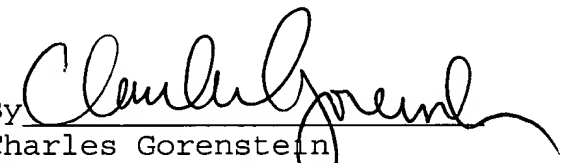
In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact Carolyn T. Baumgardner (Reg. No. 41,345) at (703) 205-8000 **to schedule a Personal Interview**.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment from or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly, the extension of time fees.

Respectfully submitted,

Dated: July 27, 2005

By 

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